IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3839 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

ANUPAM TRADERS - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
MR DC DAVE for Petitioner(s) : 1,
MS KRINA CALLA, AGP for Respondent(s) : 1 – 2.

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 03/08/2007

ORAL JUDGMENT

The petitioner, a partnership firm, has challenged the order dated 2.11.96 passed by the

Collector, Mehsana, as upheld by the appellate order passed by the State Government on 22nd April 1998.

2. The petitioner was dealing in controlled items under the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order 1981. On a raid carried out at the premises of the petitioner on 6th March 1996, it was found that a tanker containing 10,000 liters of kerosene was waiting for carriage of the said kerosene. The raiding party did not find proper authorization for carrying the said kerosene. The authorities, therefore, seized the kerosene as well as the tanker involved. It is stated by the learned advocate for the petitioner that subsequently, on furnishing bank guarantee for the entire value of the vehicle, namely, tanker, the same was released.

3. For the alleged irregularities of dealing in kerosene without proper authorization, the authorities issued a show cause notice to the petitioner why the quantity of kerosene seized and the vehicle both be not confiscated. The petitioner denied the charges and submitted that he had committed no irregularities. The Competent Authority, however, rejected the defence of the petitioner and found that he was indulging in transport and sale of kerosene without proper authorization. He had thereby breached the provisions of Orders 23 and 24 of the Gujarat Essential Articles (Licensing, Control and Stock

Declaration) order, 1981. The authority eventually ordered confiscation of the vehicle valued at Rs.2,60,000/- as also confiscation of 10000 liters of kerosene valued at Rs.24,480/-. The appeal filed by the petitioner came to be rejected. He has, therefore, preferred the present petition.

4. Appearing for the petitioner, learned advocate Shri Dave has submitted that the authorities below committed grave error in holding that the petitioner had committed irregularities with respect to the kerosene seized from his premises. He submitted that even the tanker was not involved in any manner. In any case, it was the contention of the petitioner that the authorities could not have confiscated the tanker.

5. On the other hand, learned AGP Ms.Krina Calla has opposed the petition and submitted that the authorities, on the available material on record, found that the petitioner was trying to dispose of the kerosene in open market contrary to the prohibitive orders issued by the Government. This was found at the time of raid. Order of confiscation of the commodity along with the vehicle is therefore justified.

6. Having heard the learned advocates appearing for the parties, I find that the findings arrived at by the authorities below regarding the alleged irregularities committed by the petitioner called

for no interference. These are factual findings well supported by material on record. Nothing has been produced on record to suggest that the findings are perverse.

7. In that view of the matter, the order of confiscation of kerosene calls for no interference. The question, however, is whether the authorities could have confiscated the vehicle and recovered the entire value thereof from the petitioner.

8. Section 6A(1) of the Essential Commodities Act, 1955 empowers the authorities to confiscate essential commodities seized by the Collector as well as any animal, vehicle, vessel or other conveyance used in carrying such essential commodity. However, second proviso to sub-section (1) of section 6A of the said Act which would be applicable in the present case reads as follows:-

> “Provided further that in the case of any animal, vehicle, vessel or other conveyance used for the carriage of goods or passengers for hire, the owner of such animal, vehicle, vessel or other conveyance shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel or other conveyance.”

From the said proviso, it can be seen that in case of seizure of animal, vehicle, vessel or other conveyance used for carriage of goods or passengers

for hire, the owner thereof has an option to pay in lieu of its confiscation a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel or other conveyance.

9. The Competent Authority, therefore, could not have confiscated the entire value of the vehicle initially seized but later on released on furnishing bank guarantee. The petitioner had an option to pay fine equivalent to the market value of the essential commodity seized. In that view of the matter, ordering recovery of a sum of Rs.2,60,000/- from the petitioner covering the value of the vehicle found involved in the incident is not justified. In addition to the seizure of the entire quantity of kerosene, the authority could have levied fine of the same amount of value of the kerosene in lieu of confiscation of the vehicle.

10. In that view of the matter, though the order of confiscation of the quantity of kerosene is upheld, the order for recovery of the entire sum of Rs.2,60,000/- covering the value of the vehicle is substituted by permitting the respondents to recover a sum of Rs.24,480/- (amount equivalent to the market value of the kerosene seized). In view of this modification, the respondent shall refund to the petitioner the excess amount recovered from the petitioner by encashing the bank guarantee given by the petitioner.

11. With the above modifications and directions, the petition is disposed of. Rule is mad absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)